

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods ("**Goods**") by Clarkwestern Dietrich Building Systems LLC ("**Seller**") to the buyer named in Seller's quotation or acknowledgement (the "**Order Confirmation**") ("**Buyer**"). Collectively Buyer and Seller are referred to as the "**Parties**" and individually as "**Party**."

(b) The Order Confirmation and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement supersedes any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller expressly rejects Buyer's general terms and conditions of purchase, and fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions or serve to modify or amend these Terms. Acceptance of the Order Confirmation by Buyer (which shall be deemed accepted should Buyer not object in writing within five (5) business days of receipt of the Order Confirmation) is a prerequisite to the purchase of the Goods and shall operate as an acceptance of these Terms which are expressly incorporated into the Order Confirmation. Any conduct by Buyer which recognizes the existence of a contract between Seller and Buyer including, without limitation, acceptance of delivery of any of the Goods, shall be conclusive evidence of Buyer's acceptance of, and assent to, the terms and conditions set forth herein.

2. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of the Goods. Delivery dates given by Seller are estimates only and are subject to shipping variations and requirements.

(b) Unless otherwise agreed in writing by the Parties in the Order Confirmation, Seller shall deliver the Goods to Buyer's location indicated in the Order Confirmation (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Delay in the delivery of Goods shall not relieve Buyer of its obligations to accept and pay for the Goods.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Goods shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

3. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point.

4. Amendment and Modification. Except for Section 2(b), these Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party.

5. Inspection.

(a) Buyer shall inspect the Goods within ten (10) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in the Order Confirmation; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods and if Seller confirms such Goods are Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods. Seller, at its expense and risk of loss, will pick up the Nonconforming Goods at Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 5(b) are Buyer's exclusive remedies for Nonconforming Goods. Except as provided under Section 5(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

6. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Seller's published price list in force as of the shipment date or as otherwise specifically quoted for Buyer.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets. The Prices include standard packaging.

7. Payment Terms.

(a) Buyer shall pay Seller all invoiced amounts due within thirty (30) days after the date of Seller's invoice unless otherwise agreed in writing. All payments hereunder shall be in US dollars and made by wire transfer, ACH or check.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1½% per month (an annual rate of 18%) or the highest rate permissible under applicable law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

(c) If, in the opinion of Seller, the financial condition of Buyer at any time fails to justify the terms of payment specified, Seller reserves the right to require full or partial payment or other adequate assurance of performance from Buyer before Goods are manufactured or shipped, and Seller may terminate any and all discounts, incentive programs or other special payment provisions offered to Buyer.

8. Limited Warranty. Seller warrants to Buyer that for a period of one (1) year from the date of delivery of the Goods (the "**Warranty Period**"), the Goods will be free from defects in material and workmanship.

The warranties under this section do not apply where the Goods have been: (i) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by Seller, installation, storage, handling, repair, or maintenance; (ii) reconstructed, repaired, or altered by anyone other than Seller or its authorized representative; or (iii) used with any third-party product, hardware, or product that has not been previously approved in writing by Seller.

9. Buyer's Exclusive Remedy for Breach of Warranty. During the Warranty Period:

(a) Buyer shall notify Seller, in writing, of any alleged warranty claim within ten (10) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim (but in any event before the expiration of the applicable Warranty Period);

(b) Buyer shall ship the relevant Goods within ten (10) days of the date of its notice to Seller, at Seller's expense and risk of loss, to Seller's facility for inspection and testing by Seller;

(c) If Seller's inspection and testing reveals, to Seller's satisfaction, that such Goods do not conform with the limited warranty set forth herein, Seller shall in its sole discretion, and at its expense (subject to Buyer's compliance with this Section 9), either (i) replace such Goods, or (ii) credit or refund the Price of such Goods; and

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(d) If Seller exercises its option to replace, Seller shall, after receiving Buyer's shipment of such Goods, ship to Buyer, at Seller's expense and risk of loss, the replacement Goods to a location designated by Buyer.

(e) Buyer has no right to replacement, credit, or refund for any Goods except as set forth in this Section 9. In no event shall Buyer reconstruct, repair, alter, or replace any Goods, in whole or in part, either itself or by or through any third party.

(f) **THIS SECTION 9 SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8.**

10. **WARRANTIES DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 9, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER INDIVIDUAL OR ENTITY ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 8 OF THIS AGREEMENT.

11. **Limitation of Liability.**

(a) IN NO EVENT SHALL SELLER OR ANY OF ITS REPRESENTATIVES BE LIABLE TO BUYER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT TO THIS AGREEMENT.

(c) ALL CLAIMS WITH RESPECT TO THE PURCHASE AND USE OF THE GOODS, WHETHER BASED ON CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO, NEGLIGENCE AND STRICT

LIABILITY) OR OTHERWISE MUST BE MADE WITHIN TWELVE (12) MONTHS OF THE ACCRUAL OF THE CAUSE OF ACTION.

12. Indemnification. Buyer agrees to indemnify and hold harmless Seller from any and all claims or liabilities asserted against Seller in connection with the manufacture, sale, delivery or repair of any Goods furnished by Seller, arising in whole or in part out of or by reason of the failure of Buyer, its agents, servants, employees or customers to follow instructions, warnings or recommendations furnished by Seller in connection with such Goods (including but not limited to failure to comply with the American Society for Testing and Materials – ASTM #C754, 8.1 Product Storage Standard, ASTM #C955 and AISI S202) or by reason of the failure of Buyer, its agents, servants, employees or customers to comply with all applicable Federal, state and local laws applicable to the installation and use of the Goods (including but not limited to all building codes and the Occupational Safety and Health Act of 1970), or by reason of the negligence of Buyer, its agents, servants, employees or customers.

13. Compliance with Law. Buyer shall at all times comply with all laws applicable to the operation of its business, this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any law.

14. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Seller operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Seller precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Seller.

15. Confidential Information. All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

16. Force Majeure. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond

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the impacted Party's ("**Impacted Party**") control, including, the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, epidemics and pandemics, including regulations and orders issued by any governmental authority, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) order or action by any governmental authority or requirements of law; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other events beyond the control of the Impacted Party.

17. Assignment. Buyer's rights, interests, or obligations hereunder may not be assigned, transferred, or delegated by Buyer without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

18. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement. Nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20. Choice of Law. All matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.

21. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions in any forum other than in the federal courts of the United States or the courts of the State of Ohio, in each case located in the City of Cincinnati and County of Hamilton, and each Party submits to the jurisdiction of such courts in any such suit, action or proceeding.

22. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the Parties at the addresses set forth in the Order Confirmation or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of receipt), or certified or

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registered mail (return receipt requested, postage prepaid). Except as otherwise provided in the Order Confirmation, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

23. Severability. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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